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In the
Supreme Court of the United States
OCTOBER TERM, 1943

No. 447

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST, CHARLES RIGGS, GEORGE GOFF, MIKE McGREW, LEWIS KOLB, J. M. GENTRY AND IVAN KENNEDY,

Petitioners,

vs.

YELLOW CAB TRANSIT COMPANY, a Corporation,

Respondent.

BRIEF OF THE PETITIONERS

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December, 1943.

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Petitioners,

vs.

YELLOW CAB TRANSIT COMPANY, a Corporation,

Respondent.

BRIEF OF THE PETITIONERS

I.
OPINIONS OF THE LOWER COURTS

The opinion of the District Court for the Western District of Oklahoma appears on pages 18 to 35 of the record and is reported in 48 Fed. Supl. 594. The opinion of the Circuit Court of Appeals (Circuit Judges Phillips, Bratton and Murrah, Judge Phillips writing, Judge

Bratton writing a concurring opinion, Judge Murrah dissenting), appears at pages 40 to 46 of the record. Judge Bratton's concurring opinion begins on page 47 and Judge Murrah's dissenting opinion on page 49. These opinions are reported in 137 Fed. (2d) beginning at page 274.

II.

STATEMENT OF THE CASE

Primarily this case involves 225 cases of liquor. But the issues are incomparably more far-reaching and important.

The lands constituting the Fort Sill Military Reservation constituted a portion of the territory acquired from France in 1803 and known as the Louisiana Purchase. The military post was established at its present location in 1869, which was long prior to the establishment of the State of Oklahoma. Title to the lands constituting the reservation was effected in the United States through agreement with the Comanche, Kiowa and Apache Indians approved by Congress, June 6, 1900 (31 Stat. at L., p. 676, Chapter 813, Section 6). No reference to the reservation was contained in the Organic Act providing for the establishment of Oklahoma Territory, or the Enabling Act (34 Stat. at L. 267), authorizing admission of the State of Oklahoma, consisting of Oklahoma and Indian Territories. These lands were entirely within the boundaries of Oklahoma Territory and the State of Oklahoma. In 1913 the state legislature ceded to the

United States "exclusive jurisdiction" over said lands with certain reservations of the right of taxation and service of process, and the further provision that such cession should be effective only so long as the lands should be used by the United States for military purposes. By subsequent congressional enactments (49 Stat. 1938, 40 U. S. C. A., § 290, and 54 Stat. 1059, 4 U. S. C. A., §§ 13 and 14), the state was vested with jurisdiction to apply its laws relating to workmen's compensation and income, sales and use taxes.

The F. A. S. Officers' Club is composed of army officers stationed at the Fort Sill Military Reservation. The club is managed by a secretary, who is an Army officer in active service (Agreed Statement, R. 11-18).

Prior to October 24, 1942, a number of officers stationed at the post gave to the club secretary written orders for varying quantities of intoxicating liquors, designating the brand and quantity desired, and accompanied by check or money to pay for such liquor. The secretary, acting for these officers, assembled, tabulated, totaled and telephoned these orders to M. B. Gintz Company at East St. Louis, Illinois. On October 24, the Gintz Company delivered to Yellow Cab Transit Company, as a common carrier by motor vehicle, at East St. Louis 225 cases of intoxicating liquors, which it consigned to F. A. S. Officers' Club Mess at the Reservation, instead of the officers who had signed the orders.

While the shipment was in transit, but temporarily stopped at the terminal and dock of the transit company in Oklahoma City, Oklahoma, it was seized by petitioners, as officers of the state of Oklahoma, and was transported to and placed in a vault in the county court house of Oklahoma County as an illegal shipment of intoxicating liquor subject to confiscation and destruction.

This action was commenced in the United States District Court for the Western District of Oklahoma by the Yellow Cab Transit Company against the said officers of the state of Oklahoma for a mandatory injunction requiring them to return the shipment to the transit company and refrain from interferring with its possession and transportation of such liquor. From a judgment granting relief prayed for an appeal was taken to the United States Circuit Court of Appeals for the Tenth Circuit. On July 26, 1943, a judgment was entered by said court affirming the judgment of the District Court. Issuance of the mandate has been stayed and the said shipment of liquor is still held by petitioners pending final disposition of this proceeding, of which this court accepted jurisdiction by writ of certiorari granted November 22, 1943.

Ever since its admission into the Union the state of Oklahoma has, by constitutional provision and legislative acts, forbidden the manufacture, transportation and sale of intoxicating liquors.

In the trial court the case was submitted upon an agreed statement of facts (R. 11-18). Said court held that the lands comprising the original Fort Sill Military Reservation were not within the boundaries of Oklahoma Territory (R. 25); that said reservation was never a part of or under the jurisdiction of the Territory or State of Oklahoma except as such jurisdiction has been specifically ceded to the State by Congress (R. 26); that the shipment of liquor was in transportation "through" the State of Oklahoma and moving in interstate commerce at the time of its seizure; that the seizure was unlawful and should be returned to the carrier.

The official opinion of the Circuit Court of Appeals held that the reservation was within the boundaries of the State but that since the 1913 Act of the Oklahoma Legislature territorial jurisdiction had been in the United States, a distinct sovereignty, that there was no transportation into Oklahoma for delivery or use therein and that the State enforcement officers were without authority to seize a shipment of liquor consigned for delivery in the reservation. The court further held that the shipment did not violate any of the statutes of Oklahoma or of the federal government. In reaching such conclusion the court treated as unconstitutional several sections of the Oklahoma statutes.

III.

QUESTIONS TO BE PRESENTED

(1) Fort Sill Military Reservation is a part of the State of Oklahoma even though the United States, by virtue of the 1913 Act of cession, has "exclusive jurisdiction" thereof except for a certain jurisdiction reserved in the State of Oklahoma by the act of cession, and further jurisdiction for certain purposes receded to the State by Acts of Congress.

(2) Fort Sill Military Reservation is not a "State" within the interstate commerce clauses of the United States Constitution and said shipment of liquor was not moving under the protection of interstate commerce when seized by petitioners.

(3) The possession and transportation of said liquor constitute a violation of the laws of Oklahoma.

(4) The possession and transportation of such liquor into and in the Fort Sill Military Reservation would have constituted a violation of the laws of the United States applicable thereto.

(5) Respondent is not entitled to come into a court of equity and secure injunctive relief requiring the return of such shipment.

IV.
ARGUMENT

We contend that Fort Sill Military Reservation is a part of the State of Oklahoma. We do not contend that Oklahoma, since the Act of Cession in 1913, has jurisdiction over the reservation except that reserved in the Act of Cession and the additional jurisdiction receded to the State by Congress. We contend that the possession and transportation of said liquor was in violation of the laws of the State of Oklahoma. That it was subject to such laws at the time and place of seizure and that it was not under protection as interstate commerce. We contend that certain of these laws are also in force in the Fort Sill Military Reservation, not as State statutes but as federal laws by adoption. Also that said shipment constituted a violation of the laws and policies of the United States with reference to military reservation, and that respondent is not entitled to injunctive relief in a court of equity.

(1) The district court in some way gained an entirely erroneous impression as to the status of Fort Sill Military Reservation during territorial days and after the admission of the State of Oklahoma, and therefore began its consideration of the issues involved with a false premise. It is quite true that if the reservation had not been within the boundaries of Oklahoma Territory it would never have constituted a part of the State of Oklahoma or been subject to the State's jurisdiction and there

would have been no occasion for the 1913 Act ceding jurisdiction to the United States. The contrary however was true, as recognized by the Circuit Court of Appeals. The reservation became a part of the State and the State acquired full jurisdiction thereof subject only to the ownership by the United States as a proprietor and its right to be unhampered in the use to which it was devoting the property. This was fully settled by this Court in its decision with reference to the Fort Leavenworth Reservation in the case of *Ft Leavenworth Ry. Co.* v. *Lowe*, 114 U. S. 525, 5 Sup. Ct. 995, 29 L. ed. 264. The situation was further recognized and discussed by the Circuit Court of Appeals in the case of *St. Louis S. F. Ry. Co.* v. *Satterfield*, 27 Fed. (2d) 586, the Court said in part:

> "However, the State of Oklahoma did cede authority over this reservation by a later statute, known as chapter 52 of the Session Laws of 1913 (Section 7531, Comp. St. Okla. 1921). This act is as follows:
>
> "'Section 1. That exclusive jurisdiction be, and the same is hereby ceded to the United States over all the territory now owned by the United States and comprised within the limits of the military reservation of Fort Sill, in Comanche county, and Fort Reno, in Canadian county, as declared from time to time by the President of the United States, and over such lands as may hereafter be acquired for the enlargement of said reservations: Provided, however, that the State of Oklahoma reserves the right to serve civil or criminal process within said reservations in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed *in said state but outside of such cessions and reservations;* Provided, further, that the State of Oklahoma reserves the right to tax railroad companies and other

corporations and their franchises and property on said reservations; and provided, further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservations for military purposes.'

"The provision of this statute, retaining to the state the right to tax property other than that of the government, has been held to be valid. The state in ceding dominion over reservation to the government was authorized to attach such conditions, as it saw fit, so long as they were not inconsistent with the use of the land for the intended purpose. *Ft. Leavenworth Railroad Co.* v. *Lowe, supra, Chicago, R. I. & P. Railway Co.* v. *McGlinn*, 114 U. S. 543, 5 S. Ct. 1005, 29 L. ed. 270; *Benson* v. *U. S.*, 146 U. S. 330, 13 S. Ct. 60, 36 L. ed. 994; *Palmer* v. *Barrett*, 162 U. S. 403, 16 S. Ct. 837; 40 L. ed. 1016. It follows that the State of Oklahoma did have the right to levy and collect taxes on defendant's property in the Ft. Sill military reservation."

It is thus clear that the Fort Sill Military Reservation constituted a part of the State of Oklahoma and subject to its jurisdiction, and that the jurisdiction now exercised by the national government was acquired through the above quoted Act of 1913. The language of that act further indicates that it was not contemplated that said reservation should cease to be a part of Oklahoma and severed from its territorial limits. The act reserved to the State the right to serve process in suits or prosecutions arising through rights acquired, obligations incurred or crimes committed *"in said State but outside of such cessions and reservations."* The latter portion of this quoted language would have been surplusage if such reserv-

ations had ceased to be a part of the State. The State further reserved the right to tax railroad companies and other corporations and their franchises and property on said reservation and again, as in the 1907-08 Act, Title 80, Secs. 1-3, O. S. 1941, relating to sites for post offices, etc., expressly provided that the jurisdiction so ceded should continue no longer than the United States should own and hold such reservations for military purposes.

Subsequent legislation has indicated that the national Congress has continued to consider the Fort Sill Military Reservation as a part of the State of Oklahoma, even though the United States had acquired "exclusive jurisdiction," subject to the reserved jurisdiction possessed by the State as set forth in the 1913 Act. As an illustration we find that in *1914* Congress made an appropriation by act appearing in 38 Stat. at L., page 597, for "Fort Sill Military Reservation, in *Oklahoma*," also for "Fort Sill Indian School Reservation, *in the State of Oklahoma.*" By act of March 17, *1916*, 39 Stat. at L., page 35, the State was authorized to construct and operate a fish hatchery on a part of the "Fort Sill Military Reservation, Oklahoma."

By the Act of February 27, *1931*, 46 Stat. at L., page 1423, the Secretary of War was authorized to construct a paved road across the "Fort Sill (Oklahoma) Military Reservation" and an appropriation was made to pay one-half the cost of such construction, "provided that the State of Oklahoma or civil subdivisions thereof or local

interest concerned, before construction of said road is commenced, shall contribute an amount sufficient to cover the remainder of the cost of improving said road, * * *." This act would have been fruitless and the State of Oklahoma or its subdivisions wholly unable to appropriate public funds to assist in the construction of said road if same had been outside of the State of Oklahoma.

By the Act of June 25, 1936, 49 Stat. at L., 1938 (40 U. S. C. A. § 290), Congress ceded back to the State jurisdiction over such reservation and other United States properties to the extent of applying the Workmen's Compensation Laws.

By the act of October 9, 1940, 54 Stat. at L., page 1059 (4 U. S. C. A. § § 13 to 18), Congress ceded back to the State jurisdiction to apply the State sales, use and income taxes, and enforce and collect the same in all federal areas within such State. The first section of said act reads as follows:

> "No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any federal area within such State to the same extent and with the same effect as though such area was not a federal area."

The second section contains similar language with reference to income taxes.

The third section of said act exempts the United States or any instrumentality thereof.

The fourth section reads as follows:

> "The provisions of sections 13-18 of this title shall not for the purpose of any *other provision of law be* deemed to deprive the United States of *exclusive jurisdiction over* any federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any federal area."

The case of *Ft. Leavenworth Ry. Co.* v. *Lowe, supra,* has been cited many times by both federal and state courts as authority upon the subject of jurisdiction of the United States over such reservations. It involved the right of the State of Kansas to tax property within the reservation and is therefore entirely different from the case at bar. However, the language of the Court in discussing the question is pertinent. This reservation had a history closely parallel to that of the Fort Sill Military Reservation, having been acquired by cession from France in 1803 and later becoming a part of the State of Kansas when the State was established. In 1875 the Kansas legislature passed an act to cede jurisdiction to the United States over the territory of the Fort Leavenworth Military Reservation, said Act reading as follows:

> "That exclusive jurisdiction be, and the same is hereby ceded to the United States over and within all the territory owned by the United States, and included within the limits of the United States military reservation known as the Fort Leavenworth Reserva-

tion in said State, as declared from time to time by the President of the United States, saving, however, to the said State the right to serve civil or criminal process within said Reservation, in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State, but outside of said cession and Reservation; and saving further to said State the right to tax railroad, bridge, and other corporations, their franchises and property, on said Reservation."

It will be noticed at once that the language is almost the same as that in the 1913 Act of the Oklahoma legislature, but the Kansas Act did not contain the final proviso of the Oklahoma Act to the effect that the jurisdiction ceded should continue no longer than the United States should own and hold the reservation for military purposes. We have examined the act in the Kansas statutes to see whether or not such a provision was in a subsequent section. There was none. In the course of an exhaustive discussion the Court said:

"As already stated, the land constituting the Fort Leavenworth Military Reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a State; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the State since her admission into the Union. It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex not inconsistent with the free and effective use of the fort as a military post."

In conclusion the Court said:

"In their relation to the general government, the States of the Union stand in a very different position from that which they hold to foreign governments. Though the jurisdiction and authority of the general government are essentially different from those of the State, they are not those of a different country; and the two, the State and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interest of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals, and other buildings for public uses are constructed within the States. As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the States as would defeat and impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States. It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the State.

"The Military Reservation of Fort Leavenworth was not, as already said, acquired by purchase with the consent of Kansas. And her cession of jurisdiction is not exclusive legislative authority over the land, except so far as that may be necessary for its use as a military post; and it is not contended that the saving clause in the act of cession interferes with such use. There is, therefore, no constitutional prohibition against the enforcement of that clause. The right of the State to subject the railroad property

to taxation exists as before the cession. The invalidity of the tax levied not being asserted on any other ground than the supposed exclusive jurisdiction of the United States over the reservation notwithstanding the saving clause, the judgment of the court below must be affirmed."

Thus this Court held, even is the absence of a proviso such as that contained in the Oklahoma Act, that the jurisdiction of the United States was temporary and that whenever the lands should cease to be used for the purposes for which acquired, the jurisdiction would revert to the State. This, it seems to us, clearly evidences the fact that the Court did not regard the reservation as having been entirely severed from the State and as occupying the position of a new "State" or territory.

In the immediately ensuing case of *Chicago, R. I. & P. Railway Company* v. *McGlinn*, 114 U. S. 542, which was an action for damages for the killing of a cow within the reservation, the Court cited the Fort Leavenworth case and said, in part:

"When such legislative power is acquired in any other way, as by an express act ceding it, its cession may be accompanied with any conditions not inconsistent with the effective use of the property for the public purposes intended. We also held that it is competent for the legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its powers, the use of the places being, in fact, as much for the people of the State as for the people of the United States generally, and such jurisdiction necessarily ending when the places cease to be used for those purposes."

The case of *United States* v. *Andem*, 158 Fed. 996, was a prosecution for murder committed in a post office. In applying the New Jersey statute pursuant to the federal act adopting and allowing State laws, the Court cited both the *Fort Leavenworth* and the *McGlinn* cases, *supra*, and quoted the language we have heretofore set forth.

Those two cases were also applied by the Circuit Court for the Eastern District of Virginia in *Crook Harner & Company* v. *Old Point Comfort Hotel*, 54 Fed. 604. Paragraph 1 of syllabus reads:

> "The clause in the federal constitution (Article 1, § 8, Cl. 17) giving the United States exclusive jurisdiction over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, arsenals, etc., has only the meaning of an acquisition of land by actual purchase accompanied by a cession of jurisdiction by the state; and where land is acquired by the United States directly from the state as owner by an act of cession, (as in the case of Fortress Monroe), the constitutional provision does not apply, and the United States holds the land only by the tenure prescribed in the act of cession. *Railroad Co.* v. *Lowe*, 5 Sup. Ct. Rep. 995, 114 U. S. 525, and *Railroad Co.* v. *McGlinn*, 5 Sup. Ct. Rep. 1005, 114 U. S. 542, followed."

In the body of the opinion the Court referred to the above two cases and said in part:

> "The Court held that in this class of cases the United States takes the lands only under such a tenure, limited or unlimited, as the state confers by each special act of cession, and that such title is to be dealt with by the courts precisely as if the land had been ceded by the state to a private individual."

In *Jewell* v. *Cleveland Wrecking Company et al.*, 28 Fed Sup. 364, the Court said in paragraph 2 of the syllabus:

"The national government in acquiring post office sites for its needs does not undertake to set the acquired territory entirely apart as free in every respect from the dominion and control of the local sovereignty, or to interfere, supervise, or control the rights of individuals arising upon the property, but merely proclaims its superior jurisdiction so as to give it entire freedom in using the property as an instrumentality for its operation."

In the body of the opinion the Court said in part:

"As a very practical proposition, the national government, in acquiring post office sites for its needs, does not undertake to extripate the territory thus acquired and set it entirely apart as free in every respect from the dominion and control of the local sovereignty. All it does, is to proclaim its superior jurisdiction so as to give it entire freedom in using the property as an instrumentality for its operations. The national government does not undertake to interfere, supervise or control the rights of individuals arising upon the property. It has provided no code of laws for enforcing such rights. In the case of the *Chicago R. I. & P. Railway Company* v. *McGlinn, supra*, it is to be noted that the case was tried in a STATE COURT OF KANSAS. The Railway Company did not attempt to remove the case because the amount in controversy was below the jurisdiction of the federal court. On writ of error it carried the case to the Supreme Court of the United States where the judgment of the state court was affirmed. By such affirmance, the Supreme Court acknowledged the jurisdiction of the state court. In recognizing such jurisdiction it quite effectively held that the government of the State of Kansas did extend over national territory and was operative thereon."

In *Valley County* v. *Thomas, County Treasurer et al.*, 97 Pac. (2d) 345, the supreme court of Montana said in paragraphs 14 and 15 of the syllabus:

> "Statutes whereby a state relinquishes jurisdiction of land to federal government are to be strictly construed and it will not be presumed, in absence of clearly expressed intent, that states have relinquished sovereignty over such land.
>
> "The presumption in favor of a state retaining jurisdiction over lands purchased by United States with state's consent is particularly strong where the jurisdiction in question is that of the state whose sovereignty is complete except as clearly abdicated to federal government by the United States Constitution, or by legislative act of cession."

In *James* v. *Dravo Contracting Company*, 58 Sup. Ct. 208, 302 U. S. 134, 82 L. ed. 155, paragraph 6 of the syllabus reads:

> "If lands are acquired by the United States otherwise than with consent of legislature of state, and jurisdiction is ceded by the state to the United States, the terms of the cession, to the extent that they may lawfully be prescribed, that is, consistently with the carrying out of the purpose of the acquisition, determine the extent of the federal jurisdiction."

From the body of the opinion we quote further in the "Appendix" to this brief, page ii.

A review of most of these cases and an extensive discussion of the subject will be found in the very late case of *Butterly* v. *Robbins*, 177 Va. 368, 14 S. E. (2d) 544. As said by the court in that case:

> "'Exclusive jurisdiction' does not in all circumstances mean all jurisdiction."

Applying these decisions to the situation with reference to the Fort Sill Military Reservation, we find that by virtue of the 1913 Act of the State legislature and the 1936 and 1940 Acts of Congress, Oklahoma exercises jurisdiction over the Reservation for service of process, also for taxing purposes, and for the application of the Workmen's Compensation Laws of the State. For these latter purposes the State has full jurisdiction and same is exercised through the Industrial Commission, the Tax Commission and the State courts. Jurisdiction over the Reservation for purposes other than those vested in the State, partly by reservation and partly by Act of Congress, is in the federal government. We do not believe that this situation can justify the contention on the part of the appellee that the reservation is a separate and distinct sovereignty and no part of the State of Oklahoma. In this connection, it is well to bear in mind the fact that, as said in the Lowe case and in the McGlinn case, the federal government is not a foreign government and the situation is not the same as if the State had been attempting to cede territory or jurisdiction to a foreign government. If the Reservation is a part of Oklahoma, then there can be no question that this shipment of liquor cannot claim the protection of interstate commerce as against our importation and transportation statutes. Nor can there be found any Act of Congress relating to military reservations with which our seizure of this liquor will conflict. On the contrary, as we shall hereafter show, the national policy as

to intoxicating liquors within military reservations has for nearly half a century been one of complete prohibition.

We have heretofore quoted the 1913 Act by which Oklahoma ceded jurisdiction to the United States. Similar acts ceding jurisdiction over similar areas have been passed by many states. Some of these acts, phrased like that of Oklahoma, have expressly provided that the ceded jurisdiction should continue only so long as the areas should be used by the United States for the particular purpose for which ceded. Others like the Kansas act have not contained such provision.

The act passed by the Massachusetts legislature which appears as Ch. 1, Sec. 7, General Laws 1932, concludes:

> "and exclusive jurisdiction over any such tract shall revest in the commonwealth if such tract ceases to be used by the United States for such public purpose."

It is interesting to compare these Acts ceding "exclusive jurisdiction" to the United States over tracts acquired and used for particular purposes with the language of acts ceding territory to the United States with the intent that the same shall be severed from the state and become entirely under the sovereignty of the federal government without any contemplation that it shall continue to be a part of or ever again be returned to the state.

There is no question as to the intent of both the federal government and the States concerned in the cession of the territory now constituting the District of Columbia and

such intent is reflected in the language of the Acts of Cession. The Act of the General Assembly of Maryland was passed in November, 1788, and we find the same quoted in the case of *Evans* v. *United States*, 31 App. D. C., at page 549 as follows:

> " • • • 'that the representatives of this state in the house of representatives of the Congress of the United States, appointed to assemble at New York on the 1st Wednesday of March next, be and they are hereby authorized and required on the behalf of this state to cede to the Congress of the United States any district in this State not exceeding 10 miles square, which the Congress may fix upon and accept for the seat of government of the United States.' • • • "

The Act of the Assembly of Virginia was passed on December 3, 1789, and is quoted in *Young* v. *Bank of Alexandria*, 8 U. S. 384, as follows:

> "(Revised Code, p. 52), it is enacted, 'That a tract of country, not exceeding ten miles square, or any lesser quantity, to be located within the limits of this state, and in any part thereof as Congress may by law direct, shall be, and the same is hereby, forever ceded and relinquished to the Congress and government of the United States, in full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the 8th section of the 1st article of the constitution of government of the United States.' • • • "

The lands were thus ceded outright to the United States and ceased to be parts of the states. When it developed that the territory ceded by Virginia would not be needed by the federal government it became necessary that Congress should pass the Act of July 9, 1846, ceding

the same back to Virginia in order that such territory might again become a portion of the state.

In December, 1789, the General Assembly of the State of North Carolina passed an act ceding to the United States the territory out of which the State of Tennessee was subsequently organized. We find this act and the deed of cession executed pursuant thereto quoted in an Act of Congress accepting the same and found in Vol. 1, Stats. of Tenn., 1871, pages 193 to 198. Such deed of cession recites in part:

> "Whereas, the General Assembly of the State of North Carolina, on the ____ day of December, in the year of our Lord one thousand seven hundred and eighty-nine, passed act, entitled 'An act for the purpose of ceding to the United States of America certain western lands therein described,' in the words following, to-wit:
>
> "Whereas, the United States, in Congress, assembled, have repeatedly and earnestly recommended to the respective States in the Union, claiming or owning vacant western territory, to make cessions of part of the same, as a further means, as well of hastening the extinguishment of the debts, as of establishing the harmony of the United States; and the inhabitants of the said western territory being also desirous that such cession should be made in order to obtain a more ample protection than they have heretofore received: Now this State, being ever desirous of doing ample justice to the public creditors, as well as the establishing the harmony of the United States, and complying with the resonable desires of her citizens:
>
> "1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by authority of the same, That the Senators of this State, in the Congress of the United States, or one of the

> Senators and any two of the Representatives of this State, in the Congress of the United States, are hereby authorized, empowered, and required to execute a deed or deeds on the part and behalf of this State, conveying to the United States of America, all right, title, and claim which this State has to the sovereignty and territory of the lands situated within the chartered limits of this State, * * * ."

Following with an extended description of the ceded lands and with other sections including a statement of the purpose of the organization of a new state or states. The granting clause of the deed follows the language of the legislative act.

A like intent is manifest from the language of the act of cession passed by the Georgia Assembly ceding territory out of which the State of Mississippi was subsequently organized, which act appears in Hutchinson's Miss. Stats. 1848, at page 55. The same is true with reference to the Act of the Virginia Assembly of December 20, 1783, ceding territory northwest of the Ohio, which act appears in the 1843 statutes of Indiana, page 16.

By these various acts the states ceded territory and not merely jurisdiction which should cease whenever the federal government should no longer use the lands for the specified purposes.

The distinction becomes further apparent when we consider the fact that Oklahoma, as well as the other States of the Union, has provided for the acquisition by the United States by purchase, condemnation or otherwise of sites for custom houses, post offices, arsenals, forts, military

reservations, etc., in accordance with the 17th Clause, eighth Section, Article 1, U. S. Constitution. The Oklahoma Act was passed in 1908 and appears in the Oklahoma Statutes 1941, Title 80, Sections 1 to 3, Section 1 having been slightly amended in 1915. Section 2 cedes exclusive jurisdiction over such acquired lands "for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands." Some of the acts of other states contain clauses similar to the closing phrase above quoted. Others do not. The jurisdiction of the United States over properties thus acquired is even more "exclusive" and subject to less reservations than those properties acquired by acts of cession similar to the Oklahoma Act of 1913, *supra*, ceding jurisdiction over the military reservation. Yet when we search the Acts of Congress we find nothing to indicate that such properties have ever been regarded as separate sovereignties or as having ceased to be parts of the States in which they are located. We have found no Act of Congress ever ceding back to any state any such property upon its abandonment or when it appeared that the federal government no longer needed the same. Congress has provided for the sale of such property just as any other proprietor might sell or dispose of the same. We find such provision made in 54 Stat. 764, 765, 40 U.S.C.A., Sec. 304a, authorizing disposition of surplus real property located

outside of the District of Columbia and exclusive of military or naval reservations, acquired by any federal agency.

The Act of July 1, 1939, 4 F. R. 2729, 53 Stats. 1426, 1427, 40 U. S. C. A., Sec. 341, provides for the acquisition of sites and construction of public buildings by the Federal Works Administration. Said section further provides in part:

> "When a building is about to be constructed on a site acquired prior to May 25, 1926, and such site is found by the Federal Works Administrator to be unsuitable for its intended purpose, he is hereby further authorized and empowered to acquire a new site in lieu thereof by purchase, condemnation, exchange, or otherwise, and except in case of exchange to dispose of the present site by public sale and to execute the necessary quit claim deed of conveyance * * * ."

Said act further provides in part (40 U. S. C. A. Sec. 345):

> "In carrying into effect the provisions of sections 341, 342, 343, 344, 346, and 347 of this title if the Federal Works Administrator deems it to be to the best interests of the government to construct federal buildings to take the place of existing federal buildings, he is hereby authorized to cause the present buildings to be demolished, in order that the sites may be utilized in whole or in part for such buildings, or where in his judgment it is more advantageous to construct a federal building on a different site in the same city, to sell any such building or buildings and the site or sites thereof, at such time and on such terms as he deems proper; and to convey the same to the respective purchasers thereof by the usual quit claim deed, and to deposit the proceeds of the sales thereof in the treasury as miscellaneous receipts."

Section 345b authorizes disposition of obsolete buildings and sites. No where is there the slightest indication of any need to cede such sites back to the States and certainly it cannot be said that upon the sale of an abandoned post office site the purchaser possesses a bit of independent territory of which he is the sovereign and which constitutes no portion of the State within which it is located. Yet such would be the logical and necessary result if these federal areas are to be held as constituting no part of the state while the federal government is using and exercising jurisdiction over them. It is significant that while unquestionably many such properties have been sold and disposed of by the federal agencies there is to be found no Act of Congress ceding jurisdiction back to the States. Undoubtly after the conclusion of the present war, as following the end of the World War, many properties now being owned and used for national defense will be abandoned and the properties sold.

If the contention of respondent be sustained and the Fort Sill Military Reservation held to be no part of the State of Oklahoma a condition would be created certainly not contemplated by the States or the federal government and most chaotic and disastrous in its results. Not only Oklahoma, but all the other States would be dotted with innumerable areas varying in size from a small building site to a large military reservation or park, each constituting a separate and distinct sovereignty entirely apart from the State. The State would be utterly powerless to protect

itself against shipments of liquor so long as they were consigned for delivery upon any of said federal sites and areas. This would be true not only with reference to military reservations, parks, defense plants, post office sites, but also as to every tract of unappropriated public land and Indian lands, exclusive jurisdiction over which was expressly reserved in the Enabling Act and recognized as vested in the United States by Article 1, Section 3, of the State Constitution which provides in part:

> "The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. • • •"

It has never been considered that these lands were not a part of the State and that it was necessary for Congress to pass an act ceding them to the State upon their passing into private ownership or ceasing to be restricted.

This chaotic condition would further affect the marriages which have taken place and are continually occuring in the military reservation and naval bases. In Oklahoma marriage licenses are valid only in the county were issued. They would not be valid in a reservation or a naval base not a part of the county. Moreover chaplains and others authorized to perform marriage ceremonies derive such authority entirely by virtue of State laws and would not be

so authorized to perform such ceremonies in an area not a part of the State and county.

Certainly neither the States nor the national government ever contemplated such an interpretation of the statutes as would result in the almost unthinkable situation produced by the adoption of respondent's contention. The full purpose of both the State and national government is accomplished by holding that the said area continues to constitute a portion of the State in which it is located but that while used by the United States the national government exercises jurisdiction exclusive of any control by the State other than in those respects reserved by the State or ceded to the State by Congress. With reference to Fort Sill Military Reservation the State at the present time exercises jurisdiction for the service of process in matters arising within the State but outside of the reservation and full jurisdiction and authority in applying the Workmen's Compensation Laws and laws relating to income, use and sales taxes and taxation of public utilities and corporations. Neither the State by the 1913 Act nor Congress by the Acts of 1936 and 1940 ceded territory. They ceded jurisdiction only.

That the national government itself has never regarded the taking of jurisdiction by the federal government as affecting a territorial severance of the area from the State and the transfer of same to the United States is further indicated by the Act of October 9, 1940, 40 U. S. C. A. 255, 9 A. F. C. A., Title 40, § 255. This act provides that United

States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing notice with the governor of the State or taking other similar appropriate action. It is thus left to the government agencies to determine whether the United States shall accept partial, concurrent, or exclusive, jurisdiction or none at all. We know of no instance in which Congress has ever left the matter of the transfer of territory to be thus determined. This Act was considered by this Court in *Adams* v. *U. S.*, ____ U. S. ____, 87 L. ed. Adv. Ops. 1025.

(2) Our position that this military reservation and other federal areas within the State are not severed from it and this shipment of intoxicating liquor not entitled to the protection of interstate commerce, is further supported by the fact that these areas are not and are not intended to become "States." The word "States" has been construed and defined many, many times by this Court and the courts of the various states, including the supreme court of Minnesota in State vs. Storaasli, to which we shall presently refer. The Minnesota court referred to it as "a territorial subdivision having organized civil government." We have found no instance in which a military reservation has ever been held to be a "State." There are two cases holding to the contrary.

Search has revealed only one case directly involving the question as to the applicability of the interstate commerce clause to military reservations or similar federal

areas. This is the case of *Grayburg Oil Company* v. *State*, (Texas Civ. App.), 286 S. W. 489. This case involved the right of the State to tax the sales of gasoline which the plaintiff company sold to United States and shipped from a refinery in Texas to Fort Sam Houston, over which the United States had exclusive jurisdiction. The contention was made that this was an attempt to tax the federal government or an agency or instrumentality thereof, and for that reason beyond the power of the State, and also that it was an intereference with interstate commerce. The court held against both contentions, and with reference to the question of interstate commerce said as follows:

> "We do not think the effect of ceding to the United States legislative administrative jurisdiction over territory held by that government solely for military purposes in carrying out its general powers to provide for the national defense, removes the territory thus ceded from the boundaries of the state in which it is located within the meaning of those legal principles which deny to the states any power or control by taxation or otherwise over interstate commerce. The framers of the Interstate Commerce Act clearly must have had the same view, or there would have been express provision to cover such cases, since there are military reservations in various states scattered throughout the Union. The establishment of forts, arsenals, reservations, etc., for military purposes may or may not be permanent. Clearly the United States government would not have the power to acquire land and have jurisdiction ceded to it for such purposes, and then pervert the grant to wholly and different purposes, without a further consent on the part of the ceding state. When the use for the purposes of the grant has ceased, and the grant for such purposes is abandoned, then clearly the jurisdiction of the state in so far as its sovereignty is con-

cerned reattaches. The right to tax the land owned by the government should still not exist, but its exemption from state taxation would rest upon another principle; that is, upon its federal ownership as an individual proprietor. While conceding the full grant of sovereignty for legislative and administrative purposes to the United States government over the territory thus ceded, we are unable to bring ourselves to the conclusion that the territory becomes wholly foreign to the state in matters of commerce, and that the transaction involved constituted interstate and not intrastate commerce. * * *

"We think the ceding of jurisdiction over the territory did not constitute it territory foreign to the State of Texas, in the sense that commerce conducted between a point in the state and a point within the territory was foreign and interstate commerce; and therefore we hold that the tax was valid as to these sales."

We quote further from this case in the Appendix. (Page iv).

The case was appealed but was affirmed as to both questions by the Commission of Appeals in an opinion reported in 3 S. W. (2d) 427. It was carried to the Supreme Court of the United States and was reversed in a memorandum opinion reported in 73 L. ed. 519 on the authority of the prior opinion in *Panhandle Oil Company* v. *Mississippi*, 277 U. S. 218, 72 L. ed. 857, 56 A. L. R. 583, holding such a tax invalid as to gasoline sold to the United States. This Court did not discuss the question of interstate commerce.

It may be suggested that this case is inapplicable because it involved a shipment from within the State of Texas to the military reservation located in that State. It must

be borne in mind, however, that if the contention of plaintiff be true, that the Fort Sill Military Reservation is an entirely separate and distinct sovereignty to the extent of not being any part of the State of Oklahoma and as constituting a "State" within the interstate commerce laws, it must follow that every transportation of any commodity from Lawton or Oklahoma City or any other point in Oklahoma into the Fort Sill Military Reservation, post office or other federal area is interstate commerce and govened by all of the provisions of the Interstate Commerce Act and the rules and regulations of the Interstate Commerce Commission.

It has been argued that the Texas court recognized the fact that a different situation would have existed if the shipment involved had originated beyond the boundaries of the State. In that event it would have been under the full protection of interstate commerce regardless of the point of destination within the State of Texas, as the shipment involved an entirely legitimate article of commerce and not intoxicating liquor being transported into a dry state. If the shipment involved in the present case had been 225 "packages" of ordinary "merchandise" as indicated by the bill of lading (R. 15), it would have been fully protected by interstate commerce regardless of its destination whether Oklahoma City or Fort Sill. The bill of lading, however, was deceptive, intentionally so, we believe, to protect the transportation of intoxicating liquor.

Part IV of the Interstate Commerce Act relating to freight forwarders, Title 49, c. 13, Sec. 402(a), (1002[a] U. S. Code), subdivision (3) defines "State" as follows:

> "The term 'State' means a 'State' of the United States or the District of Columbia."

The same definition is found in Sec. 902 (k), U. S. Code, relating to water carriers.

In the Motor Carrier Act, 1935, part 2, Sec. 203, Aug. 8, 1935, c. 498, Sec. 1, 49 Stats. 544 (Sec. 303 U. S. Code), "State" is defined in subdivision (8) as follows:

> "The term 'State' means any of the several States and the District of Columbia."

Section 203 (a) (10) provides:

> "The term 'interstate commerce' means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water."

The above definitions will not include a military reservation. If this had been a shipment of arms, ammunition or other such merchandise originating in St. Louis and destined for Oklahoma City or any other point in the State it would have been protected as interstate commerce.

In Section 6 of the Act of October 9, 1940, 54 Stat. at L. 1060, U. S. C. A., Title 4, § 18, to which we have heretofore referred, the term "State" is defined to include "any territory or possession of the United States." Yet it is clear that Congress did not regard a military reservation as either a "State," a "Territory," or a "Posses-

sion" of the United States but as a "federal area," which is defined as meaning "any lands or premises held or occupied by or for the use of the United States, or any department, establishment or agency of the United States."

In *Sancho* v. *Bacardi Corporation of America*, 109 Fed. (2d) 57, the Circuit Court of Appeals for the 1st. Circuit held that Puerto Rico did not come within the interstate commerce clause.

Other questions were involved, and on appeal the United States Supreme Court, in *Bacardi Corporation of America* v. *Domenech, Treasurer*, 311 U. S. 149, 85 L. ed. 98, reversed the Circuit Court of Appeals as to certain features of the case on ground that treaty provisions were violated. The court did not discuss the question of interstate commerce.

We find many other cases which, though not arising under the interstate commerce clause, help to throw an interesting light upon the meaning of the word "state" or "states." In the case of *State* v. *Storaasli*, 180 Minn. 241, 230 N. W. 572, the defendant was a non-resident of the state of Minnesota, a member of the military forces of the United States, and had been stationed at Fort Snelling within the State of Minnesota for more than a year. This reservation had been ceded to the federal government by legislative act similar to our own. Defendant had an automobile registered in the military reservation pursuant to a system of registration established by the commanding officer, he had paid a fee and was provided with license

plates and a form of registration certificate issued to him. He claimed the same privileges with reference to the use of the highways outside of the reservation and within the state as accorded by statute to non-residents living in other states. The Minnesota supreme court held that the military reservation was not a "state" or "country" within the statute allowing such exemption and that defendant was not entitled to operate his car upon the highways of the state without properly registering the same as provided by state law. This case was appealed to the United States Supreme Court and this Court in the case of *Storaasli* v. *State of Minnesota*, 283 U. S. 57, 75 L. ed. 839, affirmed the decision of the state court. In the body of the opinion the Court said:

> "A resident of the state who desires to operate his car for a single day is liable for the entire year's tax. If the state determines to extend a privilege to non-residents, it may with propriety limit the concession to those who have duly registered their vehicles in another state or country.
>
> "The mere fact that appellant has not so registered his car and cannot, therefore, bring himself within the class benefited by the exemption, does not create a discrimination against him. The state was not bound to make a classification with respect to exemptions for him and those similarly situated."

(3) The possession and transportation of this shipment of liquor was in violation of the laws of the State. Two of our statutes relating to possession of intoxicating liquor are in a somewhat uncertain status. Sec. 31, Title 37, O. S. 1941, was enacted in its present form in 1933. It

makes illegal the possession of more than one quart of liquor containing more than 3.2% of alcohol by weight and capable of being used as a beverage in or about a "place of business, or any place of amusement, or recreation, or any public resort, or any club room, whether such liquor be intended for the personal use of the person so having and keeping the same or not," with certain exceptions as to druggists, hospitals, etc., not applicable here. A statute similar except as to alcoholic content and certain excepted institutions had been enacted in 1910. In the early case of *Ex parte Wilson*, 6 Okla. Cr. 451, it was held unconstitutional. The present section as adopted in 1933 was incorporated in the 1941 statutes which were adopted as a code by legislative act, Chapter 4, Title 75, O. S. L. 1943.

Sec. 32, Title 37, O. S. 1941, declares unlawful the keeping of more than one gallon of intoxicating liquor at a place of residence. The statute was originally adopted in 1910. In *Brickey* v. *State*, 55 Okla. Cr. 451, 32 Pac. (2d) 743, the early case of *Ex parte Wilson, supra*, was referred to as having held said act unconstitutional. (Said case did not refer to this section). The Act was also referred to as having been superseded by another act which now appears as Sec. 82, Okla. Stats. 1941. Sec. 82, however, makes the possession of more than one quart *prima facie* evidence of an intent to commit an offense. It is purely a rule of evidence while Section 32 defines a criminal offense. The two sections do not cover the same matter and are not in conflict. In a later case the court again referred to Sec-

tion 32 as superceded by Section 82. Such question was not material to the decision and as above stated, the two sections are not in conflict. Sections 31, *supra*, 32 and 82 are all parts of the present code and present questions for our state court to consider.

Section 1, Title 37, Oklahoma Statutes 1941, provides:

> "It shall be unlawful for any person, individual or corporation to furnish, except as in this chapter provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof or substitute therefor, or to manufacture, sell, barter, give away or otherwise furnish any liquors or compounds of any kind or description whatsoever whether medicated or not which contain more than three and two-tenths (3.2%) per cent of alcohol, measured by weight, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship, or in any way convey, such liquor from one place within this state to another place therein except the conveyance of a lawful purchase as herein authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement, or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this chapter. A violation of any provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), and by imprisonment for not less than thirty (30) days, nor more than six (6) months; Provided, however, that the provisions

of this chapter shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries and other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies."

This section, also, has been in effect since its adoption in 1910, the 1933 amendment merely changing the alcoholic content. The statement was made in the opinion of the Circuit Court of Appeals that this section would not apply to this shipment because it originated outside of the State. This contention, however, has not been upheld by our State courts.

In *Huff* v. *State*, 9 Okla. Cr. 675, 133 Pac. 265, the liquor was brought by the defendant from Gainesville, Texas, and was being transported by him allegedly for distribution to a club of eight, each of whom had contributed a proportionate amount to pay for the liquor. In paragraphs 1 and 2 of the syllabus the court said:

"1. The Supreme Court of the United States having decided that the acts of Congress are valid which suspend for 21 years after the admission of Oklahoma into the Union the interstate federal laws which otherwise would have permitted persons residing in that portion of the state which formerly comprised Indian Territory to introduce into the state as interstate commerce intoxicating liquors for their own use, and this being a federal question, such decisions of the Supreme Court of the United States are binding upon all of the officers and people of the State of Oklahoma, and it is the plain duty of this Court to follow these decisions.

"2. A person residing in any portion of the State of Oklahoma who may introduce into the state in-

toxicating liquors and distribute the same among persons who may have furnished him money to purchase said liquors thereby violates the law and is liable to prosecution and conviction for illegally conveying such liquors from one point in the state to another point in the state."

We shall not quote from the extensive discussion in the body of the opinion. The court quoted, beginning on page 687, from the case of *Blunk* v. *Waugh*, 32 Okla. 616, 122 Pac. 717, which also was a case of a man to whom liquor was consigned for distribution to a large number who had given orders for the liquor.

Prior to the adoption of the Webb-Kenyon Act, the State was considerably hampered in dealing with shipments of liquor coming from outside the State and therefore some of the earlier cases of our court have to be read with that fact in view.

In *Barnett* v. *State*, 31 Okla. Cr. 413, 239 Pac. 680, it was contended that the statute would not apply to a person transporting liquor for his own use. However, the court overruled this contention in the following language:

"The defendants in their brief claim that this whisky, if whisky it was, may have been intended merely for their own use, and that there was no sufficient proof of an illegal transportation. This contention is untenable, because the law makes no exceptions and any transportation from one place to another, particularly where there is a change in the physical possession of the liquor is illegal."

In *Sleeper* v. *State*, 71 Okla. Cr. 136, 109 Pac. (2d) 520, the defendant was charged with transporting 426 pints

of whisky. It was contended that the evidence did not show that the liquor was being transported, but the court held that the evidence of the officers that they saw the car moving toward the highway was sufficient. In the body of the opinion the court remarked:

> "No defense was made and from the amount of liquor in defendant's possession, no defense could be made."

In *Shirley* v. *State*, 31 Okla. Cr. 174, 237 Pac. 627, and in *Thomas* v. *State*, 27 Okla. Cr. 264, 266 Pac. 600, the court held that the distance the liquor might have been transported was immaterial. In other words, our criminal court of appeals has never held that the place of origin of the transportation was material in the commission of the crime. The Oklahoma statutes simply do not recognize the right of any person to transport liquor within this State.

Section 6, Title 37, Oklahoma Statutes 1941, reads as follows:

> "It shall be unlawful for any person, individual, or corporate, to directly or indirectly, keep or maintain by himself or by associating or combining with others *any club room* or other place in which any liquor, the sale of which is prohibited by the laws of Oklahoma, is received, kept or stored, for the purpose of selling, bartering, giving away, or otherwise furnishing, *or for distribution or division among members of any club or association* by any means whatsoever, and any person who shall sell, barter, give away, or otherwise furnish, distribute or divide any such liquor so received, kept or stored, shall be guilty of a felony and shall be punished by a fine of not less than Fifty ($50.00) Dollars, nor more than Two Thousand ($2,000.00) Dollars, and imprisonment of not less than

Thirty (30) days in jail, nor more than five (5) years in the penitentiary."

With reference to the above section the opinion of the Circuit Court of Appeals (R. 45) states:

"We cannot say upon the facts here presented that the receipt of such shipment by the secretary of the club and the delivery to the officers of their several orders embraced in the shipment would constitute a violation by the club of the foregoing section. It seems to us that under the facts it could not be said that the club received, kept or stored the liquor for sale or for distribution to its members."

The court seems to interpret the statute as applicable only with reference to the club and quotes from our brief the statement:

"The club, of course, appears to have no actual connection with this liquor."

It is true that there is nothing in the record to show that the club, as such, ordered the liquor or owned any interest in the same. But it was undoubtedly being used by the secretary of the club and a number of its members in order to evade the State laws and also the Act of Congress. A more careful reading of the above section readily discloses the fact that it is not necessary for the club itself to be the owner of the liquor or as a club participate in the transaction. On the contrary, the statute seems directly applicable to the very sort of scheme which had been devised and was being followed with this shipment. In *Hawkins* v. *State*, 16 Okla. Cr. 382, 186 Pac. 490, though the facts were not the same and the plan fol-

lowed was more crude, the court applied this statute in sustaining conviction of members of a lodge which maintained a club room in which liquors were sold to members.

Section 38 of said Title 37 provides:

"It shall be unlawful for any person in this state to receive directly or indirectly any liquors, the sale of which are prohibited by the laws of this state, from a common or other carrier.

"It shall also be unlawful for any person in this state to possess any liquor, the sale of which is prohibited by the laws of this state, received directly or indirectly from a common or other carrier in this state. This section shall apply to such liquors intended for personal use, as well as otherwise, and to interstate as well as intrastate shipments or carriage. Any person violating any provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50.00 nor more than $500.00 and by imprisonment for not less than thirty days nor more than six months; Provided, however, that scientific institutions, universities and colleges, and bonded apothecaries, druggists, hospitals or pharmacists may receive and possess pure grain alcohol, as provided by the laws of this state, to be used only for such purposes as are prescribed by the laws of this state."

The opinion of the Circuit Court of Appeals (R. 45) treats this section as unconstitutional. It had never been so held by any court and was applied by the State Court in *Walker et al* v. *State*, 18 Okla. Cr. 661, 197 Pac. 520. In sustaining the conviction of two defendants charged with receiving six quarts of whiskey from the Missouri, Kansas & Texas Railway, a common carrier, the consti-

tutionality of the statute was not questioned, but it was treated as valid and we feel that under these circumstances the Federal courts should not readily hold otherwise. In 1939 the State Legislature passed an act which now appears as Sections 41 to 48, Title 37, O. S. 1941. Section 1, Title 37, *supra,* had proven sufficient through the years to enable the State to prosecute persons charged with the transportation of liquors even though it had originated beyond the State's borders, but due to the interpretation placed upon the 1936 Federal statute relating to the transportation of liquor into the states, which interpretation was adopted by the Circuit Court of Appeals in the case of *Dunn* v. *U. S.*, 98 Fed. (2d) 119, 117 A. L. R. 1302, we were obliged to adopt the 1939 Act in order to secure the application of said 1936 Federal statute to liquor importation into Oklahoma and thus obtain the cooperation and assistance of federal officers. The opinion of the Circuit Court of Appeals (R. 46) treats this act as regulatory and as setting up a permit system for the importation of liquor, and states:

> "Since there is no way to obtain a permit to import intoxicating liquor into the reservation, one who imports liquor into the reservation should not be held criminally responsible for not securing a permit, which he could not obtain."

The same argument would be applicable if this truck load of liquor were coming to Oklahoma City and would entirely destroy the effectiveness of the act. The act and convictions resulting from its enactment have been sus-

tained by such Circuit Court of Appeals, also by the Circuit Court of Appeals for the Eighth Circuit and by our State Court.

Hinkle v. *U. S.*, 115 Fed. (2d) 217; *Eppo* v. *U. S.*, 112 Fed. (2d) 931; *Hayes* v. *U. S.*, 112 Fed. (2d) 417; *Flippin* v. *U. S.*, 121 Fed. (2d) 742, certiorari denied, 62 S. Ct. 184, 314 U. S. 677, 86 L. ed. 542; *Harris* v. *State*, 74 Okla. Cr. 13, 122 Pac. (2d) 401.

No person could secure a permit to transport that liquor or any portion of it into the State of Oklahoma. The 1939 Act is unusually worded, the same being made necessary by the Federal interpretation which had been given the 1936 Act of Congress. But the act is not regulatory. It is prohibitory even beyond previously existing laws.

The first section of said act, being Section 41, *supra*, provides:

> "It shall be unlawful for any person, individual or corporate, to import, bring, transport or cause to be brought or transported into the State of Oklahoma, any intoxicating liquor, as defined by the laws of this state, containing more than four (4%) per cent of alcohol by volume, without a permit first secured therefor as hereinafter provided."

Section 42 provides for the issuance of permits for the importation and transportation of alcohol for scientific or mechanical purposes by and to scientific institutions, universities and colleges authorized to receive same, free of tax under the laws of the United States; also, alcohol

for medicinal use by hospitals and sanitoriums, and under certain prescribed conditions by druggists and manufacturing agencies for specified purposes; also, for wine for sacramental purposes by religious bodies. The section then provides:

> "No permit shall be issued to any person, or for any purpose, or for the importation of any intoxicating liquor, except as specifically authorized under this section."

Further sections contain detailed provisions with reference to the authorized permits. Violation of the act constitutes a crime punishable by a fine of not less than fifty dollars ($50.00) nor more than two thousand dollars ($2,000.00) and imprisonment of not less than thirty (30) days in jail nor more than five (5) years in the penitentiary.

Prior to the adoption of the 1939 Act our statutes authorized the importation of alcohol and wine for the above purposes, but we did not have the permit system and, in view of such fact, we were denied the assistance of the Federal Government in protecting the State against the importation of liquor and were forced to adopt this act by which we prohibited importation without permit and then prohibited the issuance of a permit for other than the few exceptions. The act did not alter at all the fact that Oklahoma is by Constitution and statute a prohibitory State and merely increased the effectiveness of such prohibition by adoption of the 1939 Act. But to hold that a person may not be convicted for importing liquor

because of his inability to obtain a permit authorizing such importation would completely vitiate all of our prohibitory laws.

We feel that this shipment was being transported clearly in violation of the statutes of this State and, therefore, subject to seizure and confiscation by the State officers unless said shipment be held to be in course of transportation to a destination entirely beyond the State's borders and protected as interstate commerce.

(4) Said shipment and the possession, transportation, delivery and distribution thereof were in violation of the laws of the United States relating to Fort Sill Military Reservation.

As we have heretofore stated, the policy of the United States, with reference to intoxicating liquors in military reservations has been one of absolute prohibition.

Section 1350, Title 10, U. S. C. A., 31 Stat. at L. 758, first enacted in 1899 and re-enacted with a slight amendment by the Act of February 2, 1901, has been, and is, the only congressional act relating to intoxicating liquors in such reservation. Said section provides:

> "The sale of or dealing in beer, wine or any intoxicating liquors by any person in any post exchange or canteen or army transport or upon any premises used for military purposes by the United States, is prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect."

The plan which was followed in the ordering of this liquor, which was seized and is involved in this case,

was a cleverly devised scheme intended to avoid the terms and prohibitions of the above Federal statute.

On the basis of such plan the statement was made in respondent's brief in the Circuit Court of Appeals that the sale of the liquor took place in East St. Louis and the Circuit Court of Appeals so construed the transaction (R. 46). The section covers more than a "sale" as narrowly and technically construed, and we have no doubt that it would have been promptly applied by the authorities in charge if the participants in this transaction had been privates or non-commissioned officers. Nor has it ever been shown that the adoption of this scheme by the commissioned officers was ever authorized or approved by the national government or by those in authority and charged with the enforcement of this section. It is evident that the contrary has been true.

Even though it might be contended that said section, when technically construed, would not apply to such shipment, there can be no question at all that the shipment was violative of the statutes of Oklahoma, as construed by the State courts, and these statutes had the force and effect of Federal statutes within said military reservation by virtue of the provisions of the Assimilative Crimes Statute. Such statute has been in force for many years, has been repeatedly re-enacted and was last so re-enacted by the Act of June 6, 1940, 54 Stat. at L. 234, 18 U. S. C. A., § 468, and reads as follows:

"Whoever, within the territorial limits of any state, organized territory, or district, but within or upon any of the places now existing or hereafter reserved or acquired, described in section 272 of the Criminal Code (S. L. S., title 18, sec. 451), shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which, if committed or omitted within the jurisdiction of the state, territory or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment."

The above section is carried as Section 857 of the 1940 Supplement to the Military Laws of the United States. Our statutes relating to the possession and transportation of intoxicating liquor were all in force prior to February 1, 1940, and as they are not only not in conflict with any Federal statute, but are in full and complete harmony with the only Federal statute relating to intoxicating liquor in military reservations, it follows that such criminal statutes of the State were made applicable as Federal statutes within the reservation.

In *Sharon* v. *Hill*, 24 Fed. 726, the Circuit Court of Appeals held that an act not specifically made an offense by the statutes of the United States, but which is an offense under the laws of the State wherein performed, is made by the assimilation statute an offense under the laws of the United States and punishable by the same penalties which are inflicted under the laws of the State. In *Franklin* v. *United States*, 216 U. S. 559, 54 L. ed. 615, the Court

held that such assimilation statute is not limited to fixing punishment for offenses expressly created by the Federal laws, but applies to and makes punishable any act committed in such places not so provided for, but which is an offense under the laws of the State.

Another case construing said section is that of *United States* v. *Press Publishing Company*, 219 U. S. 1, 55 L. ed. 65.

This section will apply as to State laws in effect at the time the act is re-enacted. *Steele* v. *Halligan*, 229 Fed. 1011.

In *United States* v. *Andem*, 158 Fed. 996, this statute was applied with reference to a crime denounced by the State law and committed in a post office building owned and occupied by the United States within a state which had ceded jurisdiction over such place to the United States.

In *United States* v. *Dolan*, Federal Cases No. 14978, it was applied in the prosecution of an assault with intent to kill, committed in a navy yard.

We think we may further be justified in suggesting that no one could very well contend that the Federal Assimilative Crimes Statute would include a "state" as the word is used in the interstate commerce clause. Yet, the statute is undoubtedly applicable with reference to the military reservation.

If the statute be sufficient for the adoption and enforcement within the reservation of the Oklahoma statutes

to which we have referred, then the transportation and delivery of this shipment to the officers' club or its secretary or the individual officers in the Reservation would be in direct violation of said section as so applied. If the reservation be a state within the interstate commerce clause, it will also be a state within the contemplation of the Twenty-first Amendment, and the transportation of liquor into it would be a violation of said amendment. In the matter of the transportation of liquor into states, not only the Twenty-first Amendment is to be considered, but also the provisions of the Webb-Kenyon Act, which was originally adopted on March 1, 1913, re-enacted on August 7, 1935, appears as Section 122, Title 27, U. S. C. A., 49 Stat. 877.

This act has been construed and applied many times including the case of *James Clark Distilling Company* v. *Western Maryland Railway Company et al.*, 242 U. S. 311, 61 L. ed. 326. In the concluding portion of its discussion of this act the Court said, in part:

> "The movement of liquor in interstate commerce and the receipt and possession and the right to sell prohibited by the state law having been in express terms divested by the Webb-Kenyon Act of their interstate commerce character, it follows that if that act was within the power of Congress to adopt, there is no possible reason for holding that to enforce the prohibitions of the state law would conflict with the commerce clause of the Constitution * * *."

The Twenty-first Amendment and the Webb-Kenyon Act were both discussed and applied in *General Sales and*

Liquor Company v. *Becker et al.*, 14 Fed. Sup. 348; also in *Dugan et al.* v. *Bridges, Governor, et al.*, 16 Fed. Sup. 694.

In connection with the situation thus created, it is interesting to read the concurring opinion of Mr. Justice Jackson in *Duckworth* v. *State of Arkansas*, 314 U. S. 380, 86 L. ed. 265, 138 A. L. R. 1144, and also the case of *O. F. Haley* v. *State*, 34 Okla. 300, 125 Pac. 736.

The case upon which respondent has especially relied is that of *Collins* v. *Yosemite Park & Curry Co.*, 304 U. S. 518, 82 L. ed. 1502. It was cited in the opinion of the Circuit Court of Appeals and the concurring opinion by Judge Bratton. We do not believe that this case, when properly construed, is applicable. In its Act of Cession the State of California had reserved the right to tax, but not the right to regulate within the park. The State was seeking to apply within the park statutes levying an excise tax upon liquors "sold within the State," and also statutory provisions requiring licenses and fixing the various fees to be paid therefor. The Circuit Court of Appeals held against the State on both issues. This Court agreed with the Circuit Court as to the inability of the State to regulate transactions within the park by requiring the securing of a permit or license, but reversed the lower court as to the State's right to tax. In holding that the Twenty-first Amendment would not result in giving the State jurisdiction to legislate for the park area and re-

quire the taking out of a license for the importation of liquor into the park, the Court used the language:

> "There was no transportation into California 'for delivery or use therein.' The delivery and use is in the park and under a distinct sovereignty."

This language has been used in support of the contention that the park did not constitute any portion of the State of California, and that the same would be true as to the military reservation in Oklahoma. We believe this contention to be based upon a misinterpretation and misconstruction of the language of the court. The court had already held that the California statute levying a tax upon sales "in this State" would include "all territory within the geographical limits of the State," and that the statute, therefore, applied within the park. The court further used the expression "exclusive jurisdiction." Yet, we believe that the court did not by this mean "all jurisdiction" to the extent of an entire severance of the territory from California, for the court had already recognized the fact that the United States had received only a "qualified jurisdiction."

It thus appears that while the term "exclusive jurisdiction" was used in the act of cession and also in the opinion by the court, same was used in the sense to which we have heretofore referred, to-wit: as exclusive of all jurisdiction except that reserved by or receded to the State. The court recognized the fact that California had not given up all jurisdiction over the park, but had reserved the

right to tax and take such steps as might be necessary to enforce payment of same. It would seem that in holding the Twenty-first Amendment would not apply because "there was no transportation into California 'for delivery or use therein,' the court was using such language in the sense of "transportation into California 'for delivery or use therein—in violation of the laws thereof,'" which is the language of the Twenty-first Amendment. The regulatory features of the State law being held inapplicable as to the park, the importation of the liquor into said park without a license, would not constitute importation for delivery or use in violation of the laws of California even though the park "be in this State," as the court had held. The same rule could have been applied as to a dealer in the City of San Francisco if for some reason the regulatory features of the State law were not applicable within said city. It is important that we bear in mind the fact that California is not a prohibitory State and that the importation of intoxicating liquor into the State is not forbidden. The case did not involve the enforcement of criminal statutes, but of a regulatory statute not applicable to a dealer within the park. In the present case the State officers were acting in the enforcement of criminal statutes prohibiting the importation, possession and transportation of intoxicating liquors into and within this State. The State officers were not attempting to exercise any jurisdiction over the reservation.

The case of *Kiker* v. *City of Philadelphia*, 346 Penn. 624, 31 Atl. (2d) 289, involved the right of the City of Philadelphia to tax the income received by a non-resident of the State from services performed in the Federal area of League Island, exclusive jurisdiction over which had been ceded to the Federal Government. The case arose after the Act of 1940 ceding to the states the right to levy income taxes within Federal areas, and the court held that an ordinance levying a tax "in Philadelphia" was applicable in the League Island Reservation as within the territorial boundaries of the city.

In *Rainier Nat. Park Co.* v. *Martin*, 18 Fed. Supp. 481, the Washington statute imposing taxes on persons "in this State" and "within this State" were held applicable to a West Virginia corporation doing business in Mt. Rainier National Park. The case was affirmed in a memorandum opinion by this Court, reported in 302 U. S. 661, 82 L. ed. 511,

(5) Said shipment and transportation thereof were in violation of the laws and public policy of the United States and appellee could not claim the protection of interstate commerce or the assistance of the courts of the United States in the recovery of said liquor.

We believe that we have sufficiently discussed the applicable statutes to establish our contention that this possession and transportation were in violation not only of the laws of Oklahoma, but of the laws and public policies of the United States. We readily agree that if the Na-

tional Congress, acting pursuant to the powers vested in it with reference to the regulation of the affairs of Federal areas, had provided for the purchase and transportation of liquors by the United States, or its agencies and instrumentalities, for use, sale, distribution or consumption in military reservations, an entirely different situation would be presented. But no such statutes, and no provision or authorization for the importation or sale or distribution of intoxicating liquors by private citizens, officers' clubs, private soldiers, officers commissioned or non-commissioned, or governmental agencies exists. The only change in policy that has occurred has been due to the fact that after Congress, by the 1933 Act, had declared 3.2% beverages to be non-intoxicating, the Judge Advocate General ruled that the sale of beer at post exchanges was no longer prohibited.

This shipment of liquor, being in violation of the laws of Oklahoma and also of the laws relating to the Fort Sill Military Reservation, the appellee is not entitled to come into this Court and secure relief. They are not entitled to say "give us back this liquor in order that we may transport it and deliver and distribute it in violation of the laws of the State and of the Nation whose protection we claim."

This lack of right of redress, because of the illegal character of the transaction, was suggested in Justice Jackson's concurring opinion in the *Duckworth Case*, 314

U. S. 390, 86 L. ed. 261. In *O. F. Haley Company* v. *State*, 34 Okla. 300, 125 Pac. 736, the Court said in the syllabus:

"Where a firm ships whisky from another state into that part of this state formerly Indian Territory, and it is seized by the state authorities, and such firm interpleads and asks a return to it of such whisky, on the ground that it is an interstate shipment, and has not lost its interstate character by delivery to the consignee, held that, because the allegations of the interplea show a violation of the criminal laws of the United States, the doors of the courts are closed to such firm."

In the body of the opinion it was said:

"It follows, then, that the allegations of the interplea in this case, upon which the plaintiff in error demands the interference of the court, by ordering a return and delivery to it of the liquors seized by the state, when viewed in the light of the decision in the Webb case, *supra*, clearly show that the interpleader has violated a law of the United States in shipping the liquors as it did. Those allegations, presented in a proper way to a federal grand jury, would justify an indictment, and later a conviction, carrying with it a possible sentence of five years in the penitentiary. Therefore, it resolves itself into the single question: Will the Court lend its aid to one who asserts a right growing out of his own violation of the law? We answer 'No.' The principle of public policy is expressed in the maxim, *Ex dolo malo non critur actio*, and in discussing this maxim, Lord Mansfield says:

"'No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own statement or otherwise, the cause of action appears to arise *ex turpa causa*, or the transgression of a positive law of this country, where the court says he has no right to be assisted.' (Wharton's Legal Maxims, p. 81.)

"This rule is sustained by this Court in the case of *Blunk* v. *Waugh et. al.*, 32 Okla. 616, 122 Pac. 717, wherein it is said:

"'It is well established, we might say universally established, that the courts will not enforce any rights which directly arise out of an illegal contract. *Holden* v. *Lynn*, 30 Okla. 663, 120 Pac. 246; *Citizens' National Bank of Chickasha* v. *Mitchell*, 24 Okla. 488, 103 Pac. 720 (20 Ann. Cas. 371); *Wagner* v. *Minnie Harvester Co.*, 25 Okla. 558, 106 Pac. 969; *Binswanger* v. *Stanford*, 28 Okla. 429, 114 Pac. 621, in which the earlier Oklahoma cases are cited; *Bowman* v. *Phillips*, 41 Kan. 364, 21 Pac. 230, 3 L. R. A. 631, 13 Am. St. Rep. 292; *Tatum* v. *Kelley*, 25 Ark. 209, 94 Am. Dec. 717; *Graves* v. *Johnson*, 156 Mass. 211, 30 N. E. 818, 15 L. R. A. 834, 32 Am. St. Rep. 446; *Banchor* v. *Mansel*, 47 Me. 58; *Hanauer* v. *Doane*, 12 Wall. 342, 20 L. ed. 439; *Fisher* v. *Lord*, 63 N. H. 514 (3 Atl. 927).'

"If the courts will not open their doors to enforce an illegal or fraudulent contract, they certainly will not enforce a demand inseparably connected with a violation of the criminal laws."

CONCLUSION

In conclusion, may we again state our position that the Military Reservation, as well as the post offices and similar properties of the United States, continue to be parts of the State of Oklahoma, and that neither the post office, the defense plants, Will Rogers Field, the various camps, Platt National Park, nor military reservations are within the interstate commerce clause. We are convinced of the correctness of our contention that with the coming of Statehood the reservations became a part of the State with full jurisdiction vested in the State except as re-

stricted by the use of the Federal Government for the purposes for which the property was owned by the United States as a proprietor; and that after the adoption of the 1913 Act, the reservation continued to be a part of the State with jurisdiction in the State for the purposes of service of process and for taxation, with full authority in the State to legislate with reference to such taxation and enforce said laws. Except for this jurisdiction reserved in the State, the United States was vested with full jurisdiction, exclusive of all other than the said reserved jurisdiction in the State. Since the passage of the 1936 Congressional act with reference to such properties as the military reservation, post offices, etc., the State has possessed the jurisdiction reserved by the 1913 Act and also jurisdiction over the reservation in the application of the Workmen's Compensation Laws, the State having full authority to legislate further upon said subject and apply and enforce such laws. By virtue of this surrender of jurisdiction by the United States, the Oklahoma State Industrial Commission has been and is exercising jurisdiction over said reservation. The State's jurisdiction was further extended by the Act of October 9, 1940, *supra*. Except in these respects, the United States exercises full jurisdiction over the reservation. As a result, we have a condition of concurrent or dual jurisdiction, with the cession to the United States by the 1913 Act operating, as said by the Supreme Court in the Ottinger Bros. case, as a "suspension" of that full jurisdiction which had been

theretofore vested in the State. This did not operate, however, to sever the reservation, together with the many post offices and other properties, from the State and establish each one of them as a separate little state or territory. If the contention of appellee be sustained, it must include and apply to not only military reservations and Platt National Pank, but to every post office in the State of Oklahoma, and each one of them will constitute a separate little dominion and every transportation of property from Oklahoma City into the post office or from any town in the State into the post office located in that town will constitute interstate commerce. To us this would constitute an unthinkable situation, with no support in the Constitution, the Acts of Congress, or the decisions of any court. We submit that said shipment was in violation of the laws of the State of Oklahoma, the laws applicable to the Fort Sill Military Reservation, and the Webb-Kenyon Act regardless of any question of the applicability of the Twenty-first Amendment; that said shipment of liquor constitutes contraband with no right of property therein, and that the appellee and the liquor company cannot come into this Court and secure the return of this illegal shipment in order that it may be delivered, distributed and possessed in direct violation of the aforesaid laws.

Our position upon these various questions is well and ably stated in the dissenting opinion of Judge Murrah, which begins on page 49 of the record. We shall not at-

tempt to quote the same, but request that the entire dissenting opinion be studied.

And finally may we allude to the dissenting opinions written in connection with the recent decision of the Supreme Court of the United States in *Pacific Coast Daily* v. *Department of Agriculture et al.*, — U. S. —, 87 L. ed. Advance Opinions 560.

The opinion of the Court is not in itself in conflict with our position, but the dissenting opinions contain language which we consider most appropriate to the situation presented by the issues arising in this case.

Respectfully submitted,

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APPENDIX

Section 2, Chapter 16, Oklahoma Session Laws 1939:

"Permits may be issued, as in this act provided, for such importation and transportation of alcohol for scientific or mechanical purposes by and to such scientific institutions, universities and colleges as are authorized to secure the same free of tax under the laws of the United States, and alcohol by and to hospitals and sanitariums for medicinal use in such hospitals and sanitariums, and for the importation and transportation of alcohol to and by any apothecary, druggist, pharmacist or manufacturing agency, who shall need same for such purpose and, who shall have executed a bond to the State of Oklahoma, approved by the Tax Commission of the State of Oklahoma, in the sum of not less than one thousand ($1,000.00) dollars, conditioned that none of said alcohol shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, or in such manufacturing business, the sale of which prescriptions, medicines or manufactured products would not subject him or it to the payment of the special tax required of liquor dealers by the United States. Permits may also be issued for the importation and transportation, or causing to be imported or transported into this state, of wine for sacramental purposes. No permit shall be issued to any person, or for any purpose, or for the importation of any intoxicating liquor, except as specifically authorized under this section."

James v. *Dravo Const. Co.*, 58 Sup. Ct. 208, 302 U. S. 134, 82 L. ed. 155.

In the body of the opinion the Court said, in part:

"If lands are otherwise acquired, and jurisdiction is ceded by the state to the United States, the terms of the cession, to the extent that they may lawfully be prescribed that is, consistently with the carrying out of the purpose of the acquisition, determine the extent of the federal jurisdiction • • •.

"But it is urged that if the paragraph be construed as seeking to qualify the consent of the state, it must be treated as inoperative. That is, that the state cannot qualify its consent, which must be taken as carrying with it exclusive jurisdiction by virtue of clause 17. The point was suggested by Justice Story in *United States* v. *Cornel*, Fed. Cas. No. 14867, 2 Mason 60, 65, 66, but the construction placed upon the consent in that case made decision of the point unnecessary. There the place (Fort Adams in Newport Harbor) had been purchased with the consent of the state, to which was added a reservation for the service of civil and criminal process. Justice Story held that such a reservation was not incompatible with a cession of exclusive jurisdiction to the United States, as the reservation operated 'only as a condition' and 'as an agreement of the new sovereign to permit its free exercise as *quoad hoc* in his own process.' Reservations of that sort were found to be frequent in grants made by the states to the United States in order to avoid the granted places being made a sanctuary for fugitives from justice.

"Story on the Constitution, volume 2, § 1225, Reference is made to statements in the general discussion in the opinion in *Fort Leavenworth R. R. Co.* v. *Lowe*, *supra*, but these are not decisive of the present ques-

tion. The decision in that case was that the state retained its jurisdiction to tax the property of a railroad company within the Fort Leavenworth Military Reservation, as federal jurisdiction had not been reserved when Kansas was admitted as a state and when the state subsequently ceded jurisdiction to the United States, there was saved to the state the right 'to tax railroad, bridge, and other corporation, their franchises and property on said reservation.' The terms of the cession in this respect governed the extent of the federal jurisdiction. See *Surplus Trading Company* v. *Cook, supra.* There are *obiter dicta* in other cases, but the point now raised does not appear to have been definitely determined.

"It is not questioned that the state may refuse its consent and retain jurisdiction consistent with the governmental purposes for which the property was acquired. The right of eminent domain inheres in the federal government by virtue of its sovereignty, and thus it may, regardless of the wishes either of the owners or of the states, acquire the lands which it needs within their borders. *Kohl* v. *United States,* 91 U. S. 367, 371, 372, 23 L. ed. 449. In that event, as in cases of acquisition by purchase without consent of the state, jurisdiction is dependent upon cession by the state, and the state may qualify its cession by reservations not inconsistent with the governmental uses. Story on the Constitution, volume 2, § 1227; *Kohl* v. *United States, supra,* 91 U. S. 367, at page 374, 23 L. ed. 449; *Fort Leavenworth R. R. Co.* v. *Lowe, supra; Surplus Trading Company* v. *Cook, supra.; United States* v. *Unzeuta, supra.* The result to the federal government is the same whether consent is refused and cession is qualified by a reservation of concurrent jurisdiction, or consent to the acquisition is granted with

a like qualification. As the Solicitor General has pointed out, a transfer of legislative jurisdiction carries with it not only benefits, but obligations, and it may be highly desirable, in the interest both of the national government and of the state, that the latter should not be entirely ousted of its jurisdiction. The possible importance of reserving to the state jurisdiction for local purposes which involves no interference with the performance of governmental functions is becoming more and more clear as the activities of the government expand and large areas within the states are acquired. There appears to be no reason why the United States should be compelled to accept exclusive jurisdiction or the state be compelled to grant it in giving its consent to purchases."

See, also:

Palmer v. *Barrett*, 162 U. S. 399, 40 L. ed. 1015.

Grayburg Oil Co. v. State (Tex.), 286 S. W. 489:

"There have been quite a number of adjudications with reference to the powers of the state in territory, jurisdiction over which has been ceded to the government in like cases. It has been uniformly held that legislative authority therein is absolute in the United States government and is wholly wanting in the state government. Consequently acts done within the territory are not punishable by state laws, and the police power of the state does not extend to any portion of the territory. The regulation of business, such as license taxes, where the business is conducted upon the ceded territory, are matters of federal and not state control. In the early case of *Mitchell* v. *Tibbetts* (Mass. 1835), 17 Pick. 298, it was held that a prosecu-

tion would not lie for the violation of a statute which made certain requirements of vessels transporting stone and gravel within the commonwealth, where the vessel was engaged in transporting stone from a point in Maine to the navy yard at Charlestown. The Court construed the act to apply to landing stone, etc., at some place or taking them some place within the commonwealth, and held that a mere transporting through waters belonging to the commonwealth was not covered by the statute. The statute was held not to apply to the case in question on the ground that the stone was not landed at a place within the State of Massachusetts.

"It is quite evident that the statute there under consideration was a police regulation, and independently of whether the transportation might be regarded as inter or intrastate commerce, when it is considered that under the interpretation given the statute its violation consisted solely in the landing of stone, and this landing was within the military reservation, the application of the statute in that case would have required a holding that the police power of the state extended to the ceded territory. It is clear that the decision reached was the only proper decision that could have been made. If the case had depended upon whether the transaction was inter or intrastate commerce, then clearly the jurisdiction of the state would not have attached, because the shipment was from a point outside the State of Massachusetts. If the shipment had been from a point in Massachusetts, a different question would have been presented, and the case might properly have been decided wholly apart from the question of interstate commerce. In such case, even if the transaction be held to be interstate commerce, it would have been

competent for the state to regulate the loading at a point within its borders, provided the effect of the statute was not unduly to burden interstate commerce.

"There have been a number of cases upon the question of the power of a state to tax personal property situated upon military and Indian reservations within the state boundaries. With the exception of the case of *Concessions Co.* v. *Morris*, 109 Wash. 46, 186 Pac. 655, the uniform holding appears to be that such property, if not otherwise exempt, would be taxable. This case reviews the authorities upon the subject and distinguishes the other cases from the case there presented. The holding was that the property was not taxable where its situs was fixed by its physical location. The Court says in concluding:

"'It is to be borne in mind that we are not here concerned with the question of whether the personal property owned by the appellant might or might not be assessed and taxed against it as its place or residence within the state.'

"There are some expressions in the opinion which would lead to the conclusion that the Court was of the view that the ceded territory ceased to be a part of the state and became a territory of the United States. These expressions, however, are not essential to the decision reached. If we concede the correctness of that holding, still it is not controlling in the case at bar. The right to tax personal property by virtue of its situs as fixed by its physical location might very well be held to be a proper legislative function, and where legislative jurisdiction has been ceded to the federal government it may be held to follow as a logical conclusion that the state's power of taxation within the district is wholly nullified, and

this without a further holding that the district ceased to be within the territorial limits of the state for all purposes and absolutely. The case of *Ft. Leavenworth R.* v. *Lowe*, 114 U. S. 525, 5 S. Ct. 996, 29 L. ed. 264, is probably a leading one upon this subject. The opinion is by Mr. Justice Fields, who enters into a lengthy dissertation upon the history and purpose of the constitutional provision in question and the necessities which require complete legislative and administrative jurisdiction in the federal government. It is there pointed out, as in other cases, that the mere reservation by the state of concurrent jurisdiction to serve criminal and civil process does not in any way affect the absolute jurisdiction of the United States in matters of legislation, which includes, of course, the matter of taxation; but that this reservation is merely for the purpose of preventing the ceded jurisdiction from rendering the territory a harbor or place of refuge for those seeking to evade the processes of the state and its courts in the administration of criminal and civil laws. We attach no particular importance to the fact that this reservation is made in the grant.

"The power of the United States government to own land is not an absolute one, but extends only to the necessary and incidental powers which it posseses as a sovereign government. It is essential in the administration of that government and the performing of its functions throughout the territorial limits of the United States that it have supreme legislative and administrative jurisdiction over such portions of the states as may be necessary in the performance of such functions. The power of the government in this regard is not only that of an individual proprietor or owner of land, but also that of a sovereign state to exercise governmental functions therein. In other

words, sovereignty. But we apprehend that there is a marked difference between sovereignty acquired for such purpose and acquisition or ownership of territory where the permanent seat of government is to rest, or where the territory is to be administered generally by the United States government, as where foreign territory has been acquired by treaty or conquest, or where it holds the territory during a pre-territory stage, pending its eventual admission into the Union as a sovereign state. In the latter instance it is clear that the territory constitutes no part of the state for any purpose, and commerce within its limitations is wholly foreign to the state, and commerce between it and the state is not commerce within the state.

"We are supported in this view by the first section of the Interstate Commerce Act, which was originally passed in 1887 (24 Stat. 379). This act was very carefully drawn by able statesmen, and the language used in defining the cases to which the act should apply was precise, studied, and guarded. The act was undoubtedly intended to cover every case where commerce by common carriers by rail passed beyond the boundaries of the individual state, and was intended not to apply to commerce wholly within a state. The language of the statute is that its provision shall apply to any common carrier or carriers engaged in the transportation of passengers or property, etc., 'for a continuous carriage or shipment, from one state or territory of the United States, or the District of Columbia, to any other state or territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other

place in the United States, and also to the transportation in like manner of property shipped from any place in the United States, to a foreign country and carried from such a place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or in an adjacent foreign country.'

"We think the word 'territory,' as used in this act, is to be given its generally accepted meaning. If it had been intended by the framers of the act to apply it to all territory over which the United States has legislative jurisdiction, different language would have been used, and the specific designation of the District of Columbia would in that case have been wholly superfluous. We think the word was meant to designate those portions of the territorial possessions of the United States which were organized and exercised governmental functions under the Act of Congress, and were political units subject exclusively to the federal government, such as the territories which have from time to time been granted statehood.